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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,223	06/20/2003	Sudhindra P. Herle	2003.07.011.WT0	9788

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Docket Clerk  
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Dallas, TX 75380

EXAMINER
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RAMPURIA, SATISH

ART UNIT	PAPER NUMBER
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2191

MAIL DATE	DELIVERY MODE
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01/16/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<b>Application No.</b> 10/600,223	<b>Applicant(s)</b> HERLE, SUDHINDRA P.	
	<b>Examiner</b> SATISH RAMPURIA	<b>Art Unit</b> 2191	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-24.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

/Wei Y Zhen/  
 Supervisory Patent Examiner, Art Unit 2191

Continuation of 11. does NOT place the application in condition for allowance because: In response to applicants arguments that neither Cupps nor O'Neill, nor any combination of them, teaches or suggests that the first CPU downloads a software upgrade file from a wireless network and stores the downloaded software upgrade file in second memory, associated with the second CPU. Nothing in Cupps or O'Neill teaches that this would be desirable or operable, or that there would be any predictable result or likelihood of success. Examiner respectfully disagrees. The combination of Cupps and O'Neill discloses the claimed limitations. For example, O'Neill teaches first CPU (paragraph [0032] "FIG. 2 is a system diagram of a wireless communication device") downloads said software upgrade file from said wireless network (paragraph [0032] "download agent... download... software... from a distribution environment") and stores said downloaded software upgrade file in said memory (paragraph [0032] "upload agent... uploads software form the non-volatile or volatile memories... of wireless communication devices"). As indicated in the rejection that O'Neill does not explicitly disclose a second memory and a second CPU, however, Cupps in combination of O'Neill teaches dual processor wireless device e.g., a second central processing unit (CPU) (paragraph [0013] "The second processor processes the programs and data"); and a second memory associated with said second CPU (paragraph [0119] "memory 308... divided into two portions of high speed synchronous RAM, with system processor 302 and processor 320 being allocated their own separate portions of RAM 308"). The rejection also clearly points out the motivation to combine their teachings to maintain the power and memory of a such small devices such as cellular phone to allow perform the complex function for user's need see paragraphs [0003] and [0013]. Therefore, the rejection is proper and maintained herein.

In response to applicants arguments that O'Neill reference (10/631,567) [which was referred as '721 by the applicants] do not appears to be prior art for this application because the continuation application (10/311,462) [which was referred as '414 by the applicants] of '721 do not support the subject matter of present invention e.g., '414 does not discuss a "wireless communication device" at all. Thus the rejection is improper. Examiner respectfully disagrees. '414 is towards updating and distributing information to client devices, see paragraph [0040]. More particularly, '414 disclose updating wireless communication device or mobile phones or cellular phones and mentioned mobile phones or cellular phones many times, for example, see paragraphs [0004], [0007], [0040], [0055], [0077], [0107], [0108] etc. therefore, the continuation application '414 contains the subject matter of the claimed invention and is proper rejection. Further, applicants indicated that provisional applications 60/401,054 and 60/412,850 only references but does not incorporate, however, paragraph [0002] clearly indicate that these applications are incorporated as well and it is also indicated in eDAN and in PAIR that '721 claims the priority of provisional applications 60/401,054 and 60/412,850.